

### REMARKS

Applicant has reviewed the Office Action mailed on October 2, 2003 as well as the art cited. Claims 31 – 40 are currently pending in this application.

#### Information Disclosure Statement

Applicant respectfully requests that a copy of the 1449 form, listing all references that were submitted with the Information Disclosure Statement filed on August 27, 2003, marked as being considered and initialed by the Examiner, be returned with the next official communication. A courtesy copy of the 1449 filed on August 27, 2003 is enclosed.

#### Rejections Under 35 U.S.C. § 103

Claims 31, 33-35, and 40 were rejected under 35 USC § 103(a) as being unpatentable over Burroughs et al. (U.S. 2002/0144284 A1) in view of Safadi (U.S. Patent No. 5,892,910).

Claims 36-38 were rejected under 35 USC § 103(a) as being unpatentable over Burroughs et al. (U.S. 2002/144284) in view of Safadi (U.S. Patent No. 5,892,910) and Parsons (U.S. Patent No. 3,999,171). Applicant respectfully traverses these rejections.

To establish a *prima facie* case of obviousness under 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP 2143.

#### Claim 31

Burroughs et al. does not teach or suggest each element of Claim 31. For example, Claim 31 includes the element “passing communications through a directional coupler.” Burroughs et al. does not teach or suggest “passing communications through a directional coupler,” as is disclosed and claimed in Claim 31 of the present application. Referring to Figure paragraphs [0022] and [0026] Burroughs et al. discusses a combiner 107 that “allows the downstream signal from two or more cable modem terminating systems 103 to be coupled together onto a single

cable. The data in each downstream channel will not be corrupted by the other provided that each respective downstream and each respective upstream channel is carried on its own frequency.” Problems associated with using a combiner in the prior art is discussed in the background section of the present application in paragraph [0005]. As discussed, the present invention overcomes the problems associated with combiners with the use of directional couplers. Burroughs et al. teaches away from “passing communications through a directional coupler” by using a combiner. Since Burroughs et al. does not teach or suggest “passing communications through a directional coupler,” a prima facie showing of obviousness has not been shown.

In order to overcome this deficiency, the Examiner provides Safadi. The Examiner asserts that “Burroughs et al. does not disclose the combiner is a directional coupler. However, Safadi teaches in column 8, lines 64-66, that combiner employs directional coupler to attain high isolation for protection from the signal inputs (channels) interference. Therefore, it would have been obvious to one of ordinary skill in the art to modify Burroughs et al. by employing directional coupler for the combiner for the purpose of preventing the interference between the transmission signals.” Applicant respectfully traverses the Examiner’s assertions.

First, the Applicant agrees with the Examiner that Burroughs et al. does not disclose the combiner is a directional coupler and further does not teach or suggest passing communications through a directional coupler as found in claim 31. Second the Applicant directs the Examiner to the cited text of Safadi et al, column 8, lines 64-66, which reads “The RF combiner 35 employs directional coupler circuitry to attain high channel isolation for protection from channel to channel interference.” There is no mention in Safadi et al. that the RF combiner 35 is a directional coupler or the RF combiner 35 is or can be replaced by a directional coupler.

Applicant submits that Safadi et al. is incapable of overcoming the deficiency of Burroughs et al. as Safadi et al. also does not teach or suggest the method of claim 31. Safadi et al. also teaches away from “passing communications through a directional coupler” by using a combiner. Safadi et al is directed to a remote/local hub 14 and discusses including an RF combiner 35 which “employs directional coupler circuitry to attain high channel isolation for

protection from channel to channel interference.” Safadi et al. does not teach or suggest the method of providing redundancy in a cable modem termination system as found in claim 31. Accordingly, Applicant respectfully request the withdrawal of the rejection of Claim 31 under 35 U.S.C. 103(a).

Claims 32-34 depend from and further define patentably distinct Claim 31, Applicant respectfully requests the withdrawal of the rejection of dependant Claims 32-34. Applicant believes the dependant claims are allowable for at least the reasons provided above. As a result, further rejections have not been addressed in this response. However, the Applicant retains the right to address said further rejections if further response is necessary.

Claim 35

Neither Burroughs et al. nor Safadi et al. alone or in combination teach or suggest a method of operating a CMTS including a directional coupler connected between each upstream communication port and the subscriber equipment and between each downstream communication port and the head end. Again the Examiner relies on the combination of Burroughs et al. and Safadit et al. Applicant respectfully traverses this assertion for at least the reasons provided above with respect to claim 31. Further even if combined, which the applicant is not conceding, the cited references would not teach or suggest the methods of claims 31 and 35 as replacing the combiner 107 of Burroughs et al. with RF combiner 35 of Safadi et al. would not result in the either methods as found in claims 31 and 35. Accordingly, Applicant respectfully request the withdrawal of the rejection of Claim 35 under 35 U.S.C. 103(a).

Moreover, since dependant claims 36-40 depend from and further define patentably distinct claim 35, Applicant respectfully requests the withdrawal of the rejection of dependant Claims 36-40. Since, Applicant believes the dependant claims are allowable for at least the reasons provided above, further rejections have not been addressed in this response. However, the Applicant retains the right to address said further rejections if a further response is necessary.

Reservation of Right

Applicant expressly reserves the right to swear behind any reference cited by the Examiner under 35 U.S.C. §102(e)/103, 102(a)/103, 102(a), or 102(e). Any statements regarding these references are not an admission that the references are prior art.

Allowable Subject Matter

Applicant thanks the Examiner for the indication that claims 32 and 39 were allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has not rewritten claims 32 and 39 at this time as he believes the base claims from which the depend are currently allowable.

Serial No.: 09/995,167

Filing Date: November 26, 2001

Attorney Docket No. 100.361US01

Title: PASSIVE CMTS REDUNDANCY

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**CONCLUSION**

Applicant respectfully submits that claims 31-40 are in condition for allowance and notification to that effect is earnestly requested. If necessary, please charge any additional fees or credit overpayments to Deposit Account No. 502432.

If the Examiner has any questions or concerns regarding this application, please contact the undersigned at (612) 332-4720.

Respectfully submitted,

Date: 12/22/2003

  
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